

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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IVAN G. MCKINNEY,

Plaintiff,

v.

SGT FITZGERALD et al.,

Defendants.

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Civ. No. 18-12987 (FLW) (LHG)

**MEMORANDUM AND ORDER**

The Court previously administratively terminated this action as the Complaint included only an incomplete application to proceed *in forma pauperis* and uncertified prison account statement. (ECF Nos. 3 & 4.) Plaintiff has now submitted a complete *in forma pauperis* application with a proper account statement. (ECF No. 5.) Leave to proceed in this Court without prepayment of fees is authorized. *See* 28 U.S.C. § 1915. This case is subject to screening by the Court *sua sponte*, and the Court will screen the Complaint in due course.

Therefore, IT IS, on this 29<sup>th</sup> day of November 2018,

ORDERED that the Clerk shall reopen this case; and it is further

ORDERED that Plaintiff's application to proceed *in forma pauperis*, (ECF No. 5), is GRANTED; and it is further

ORDERED that the Complaint shall be filed; and it is further

ORDERED that **SUMMONS SHALL NOT ISSUE** at this time, as the Court has not yet completed its *sua sponte* screening; and it is further

ORDERED that the time to serve process under Federal Rule of Civil Procedure 4(m) is hereby extended to ninety (90) days after the Court permits the Complaint to proceed; and it is further

ORDERED that, as per 28 U.S.C. § 1915(b) and for purposes of account deduction only, the Clerk of the Court shall serve a copy of this order by regular U.S. mail upon the warden of New Jersey State Prison and the Attorney General of the State of New Jersey; and it is further

ORDERED that Plaintiff is assessed a filing fee of \$350.00 and shall pay the entire filing fee in the manner set forth in this order pursuant to 28 U.S.C. § 1915(b)(1) and (2), regardless of the outcome of the litigation, meaning that, if the Court dismisses the case upon *sua sponte* screening or Plaintiff's case is otherwise administratively terminated or closed, § 1915 does not suspend installment payments of the filing fee or permit refund to the prisoner of the filing fee, or any part of it, that has already been paid; and it is further

ORDERED that, under *Bruce v. Samuels*, 136 S. Ct. 627, 632 (2016), if Plaintiff owes fees for more than one court case, whether to a district or appellate court, under the Prison Litigation Reform Act (PLRA) provision governing the mandatory recoupment of filing fees, Plaintiff's monthly income is subject to a simultaneous, cumulative 20% deduction for *each* case a court has mandated a deduction under the PLRA, *i.e.*, Plaintiff would be subject to a 40% deduction if there are two such cases, a 60% deduction if there are three such cases, etc., until all fees have been paid in full; and it is further

ORDERED that, under 28 U.S.C. § 1915(b)(2), in each month that the amount in Plaintiff's account exceeds \$10.00, the agency having custody of Plaintiff shall assess, deduct from Plaintiff's account, and forward to the Clerk of the Court payment equal to 20% of the preceding month's income credited to Plaintiff's account, in accordance with *Bruce*, until the \$350.00 filing fee is paid. Each payment shall reference the civil docket numbers of the actions to which the payment should be credited; and it is finally

ORDERED that the Clerk of the Court shall send a copy of this Order to Plaintiff by regular U.S. mail.

/s/ Freda L. Wolfson  
FREDA L. WOLFSON  
United States District Judge